IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 170 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

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GITABEN BHUPENDRAKUMAR MISTRY

Versus

BAWARAM JAGANNATH PARASARS

Appearance:

MR DN TRIVEDI for Petitioner No. 1-2
MR BC DAVE for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MS AVANI S MEHTA for Respondent No. 3
MR JA ADESHRA for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 10/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted.

2. Ms Avani S Mehta appears for opponent no.3 Insurance Company and waives service of the notice in appeal. On a joint request, this appeal is taken up for hearing today.

3. From the earlier order dated 3rd April 2000 passed in the present appeal by the earlier Bench, we note that the controversies sought to be raised by the appellant shall be confined to the question of interest in the context of the final award passed by the Tribunal. We have, therefore, heard the learned counsel for the respective parties only on this question, as also because learned counsel for the appellants-original claimants presses the appeal only on this ground.

4. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the original claimants, who challenges, to the aforesaid extent, the judgement and award of the Motor Accident Claims Tribunal (Aux), Ahmedabad in Motor Accident Claim Petition No.409/94.

5. On the facts of the case we find that the Tribunal awarded the original claimants a compensation in the sum of Rs.2,84,320/-. However, interest has been awarded at the rate of 12% per annum, only on the sum of Rs.1,24,700/- from the date of the petition till realisation.

6. It may be clarified here that the learned counsel for the appellant has not challenged the specific rate of interest awarded, but challenges only the legality and validity of restricting the interest on part of the awarded amount.

7. As a result of the hearing and discussion, it appears that the Tribunal has awarded interest only on a part of the compensation amount, apparently on the basis that no interest can be awarded on "loss of future income". We may also clarify here that that portion of the compensation on which interest has not been awarded has not been specifically segregated as "loss of future income".

8. It must be distinctly understood that the claimants have not factually claimed any amount by way of loss of future income. The entire evidence led before the Tribunal, and in fact as appreciated by the Tribunal, proceeds on a slightly different basis and on a different perspective.

9. In fact what the Tribunal has done is to consider the evidence on record on the aspect of the actual income of the deceased at the time of the accident, which has been found to be Rs.2250/- per month. Taking into account the prospects of increase in income in future, an amount of Rs.500/- has been added to the current and proved income of the deceased. It is on this basis that the Tribunal has found that the basic figure of income for the purpose of calculating the dependency loss would be Rs.2500/- per month. From this, the Tribunal has deducted one-third of the income by way of personal expenses of the deceased, and thus, the figure of dependency loss for the purpose of applying the multiplier is found to be Rs.1670/- per month. There cannot be and in fact there is no controversy on these figures. It is on this basic figure of Rs.1670/- that a multiplier of 13 has been applied giving a figure of Rs.2,59,320/-. To this figure, there are additions under other separate and distinct heads, and ultimately lead to the total amount of compensation at Rs.2,,84,320/-. It is therefore found that the actual loss of future income is not a factor which has been specifically considered by the Tribunal nor calculated. Hence it is difficult for us to ascertain and/or for learned counsel for the Insurance Company to justify, as to how an approximate sum of Rs.1,60,000/- has been deducted from the total amount of compensation so far as awarding interest is concerned.

10. Thus, on the facts of the case, we find that the award so far as it awards interest only on part of the compensation amount is not justified in law. Even otherwise on a question of principle no such deduction would be justifiable.

11. Our attention has been drawn to a decision of the Supreme Court in the case of Smt. Sneha Dutta and Another Vs. Himachal Road Transport Corporation, reported in AIR 2000 SC 201 as also a decision in the case of Tasnimtaj and Ors. Vs. Managing Director, KSRTC, reported in (1998)3 SCC 145.

12. Looking to the facts of the case, as narrated in both the decisions, we find that the Supreme Court has

specifically taken into consideration the current income as one figure, the prospects of increase in such income in future as the second figure, and has applied the appropriate multiplier to the average of these two figures.

13. It would be entirely a different question of principle, if any claim had been made or had been attempted to be justified, under the head of loss of future income. However, this is not so in the present case.

14. Thus, on the facts and circumstances of the case, we find that the impugned award, to the extent it awards interest only on part of the total amount of compensation, is not justified in fact and in law. The impugned award is therefore quashed and set aside to the aforesaid extent. The appellants-original claimants shall, therefore, be entitled to interest at the rate of 12% per annum on the amount of Rs.2,84,320/- from the date of the petition till realisation.

15. This appeal is, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree accordingly. It is clarified that the orders passed by the Tribunal as regards investment and disbursement shall continue to operate in respect of the amount due to the claimants under the present decree.

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